s 17(1) of the Sabah Land Ordinance and therefore void and unenforceable for the illegality, is that the trust relationship does not breach the Sabah Land Ordinance and is therefore not void.

My ruling in issue (2): Whether the sale and purchase agreements entered between the company and the purchasers are tainted with illegality being in breach of s 17(1) of the Sabah Land Ordinance, is that the sale and purchase agreements are not tainted with illegality.

My decision here is one which is in tandem with the various Supreme Court decisions (as elaborated earlier).

I therefore grant the order-in-terms of the applications by the plaintiffs dated (i) 29 December 1988 (OS 150 of 1988): (ii) 5 January 1989 (OS 151 of 1988): and (iii) 29 December 1988 (OS 152 of 1988).

Applications allowed.

Solicitors: *Shelly Yap Leong Tseu Chong Chia & Co; Fernandez & Co; Malanjum Lee & Aziz & Co.*

Reported by *Wong Kian Kheong*

Tan Keok Yin v Cheah Saw Hong

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO S7-47-796-1987
LIM BENG CHOON J
26 OCTOBER 1990

Family Law — Divorce — Whether marriage has irretrievably broken down — Conduct of parties — Standard of behaviour — Whether interim injunction restraining harassment amounts to res judicata on matrimonial behaviour — Law Reform (Marriage and Divorce) Act 1976, ss 53(1),(2),54(1) & (2)

The husband petitioned for divorce on the ground that the marriage had broken down irretrievably as the parties had lived apart for a continuous period of at least two years. The respondent contested the petition alleging that the petitioner had deserted her, denied that the marriage had irretrievably broken down, and stated that she believed that the petitioner would return to the family. She also submitted that in all the circumstances, and in particular considering the interests of the children, it would be wrong in principle to dissolve the marriage. The petitioner then filed a reply stating that the parties had lived apart for a continuous period of five years, and that the respondent had behaved unreasonably before and after the separation. (In 1986, the petitioner had obtained an interim injunction restraining the respondent from harassing him, his superior, and/or his friends and associates.) The respondent's rejoinder, filed with leave of the court, denied the allegations and accused the petitioner of adultery. At the hearing, both parties refused to give oral evidence or call witnesses, preferring a decision to be made on affidavit evidence alone.

Held, dismissing the petition:

(1) Upon proof of the fact that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition, the petitioner has prima facie proved that the marriage has irretrievably broken down, if, but only if, the respondent is not contesting it or has no answer as to why the respondent would allow the petitioner to live separately from her or him as the case may be. However, when the respondent is contesting the petition and is able to put up a reasonable answer that notwithstanding the two-year separation the marriage has not irretrievably broken down, then the court must consider all the circumstances, including the conduct of the parties and the interests of the children of the marriage, before deciding whether the marriage should be dissolved.

(2) The petitioner had in the divorce petition, relied completely on the two-year separation as a ground for divorce, and additionally had produced the necessary certificate from the Reconciliatory Tribunal certifying that they were unable to resolve the matrimonial difficulty. However, the petitioner did not state the nature of the matrimonial difficulty. The respondent's answer has put up a reasonable explanation to support her contention that the marriage has not irretrievably broken down.

(3) If the allegations of misconduct made by the petitioner were true, he would be entitled to a divorce. However, on the facts and from his refusal to give oral evidence, his allegations cannot be accepted, as they do not reconcile with the respondent's answer. The petitioner's allegations appear to be made to hide the fact that he wanted a divorce in order to continue with his infidelity.

(4) Despite the petitioner having obtained an interim injunction restraining the respondent from harassing him, it is

trite law that an interim injunction would be granted so long as the applicant makes out a triable issue — it is granted to maintain the status quo pending the trial of the matter. Thus an injunctive order cannot have the effect of res judicata.

(5) Although the respondent also did not give oral evidence under oath, the evidence that the marriage lasted for 15 years is consistent with the assertion of the respondent that she had done nothing wrong. Besides, the burden of proving the respondent has behaved in an unreasonable manner is on the petitioner. Bearing in mind that the husband petitioner had had extra-marital affairs with at least three other women, which was not challenged, this is a clear indication that the wife respondent is not a vicious and unreasonable person.

[Bahasa Malaysia summary

Suami mempetisyen bagi perceraian atas alasan habawa perkahwinan telah retak dengan tidak boleh diperbaiki lagi kerana kedua-dua pihak telah tinggal berasingan bagi tempoh yang terus-menerus sekurang-kurangnya dua tahun. Responden mempertikaikan petisyen mengatakan bahawa pempetisyen telah meninggalkannya, menafikan bahawa perkahwinan telah retak dengan tidak boleh diperbaiki lagi, dan mengatakan bahawa dia percaya bahawa pempetisyen akan balik kepada keluarganya. Dia juga berhujah bahawa dalam semua keadaan, dan khususnya dalam mempertimbangkan kepentingan kanak-kanak, adalah salah dalam prinsip untuk membubarkan perkahwinan. Pempetisyen kemudiannya memfail satu jawapan bahawa pihak-pihak telah tinggal berasingan untuk tempoh terus-menerus bagi tempoh lima tahun, dan bahawa responden telah berkelakuan tidak munasabah sebelum dan selepas perpisahan. (Dalam 1986, pempetisyen telah memperolehi suatu injunksi interim menghalang responden daripada mengganggunya, orang atasannya dan/atau kawan-kawan dan sekutu-sekutunya.) Jawapan responden, yang difail dengan kebenaran mahkamah, menafikan pengataan dan mendakwa perzinaan oleh pempetisyen. Pada perbicaraan, kedua-dua pihak enggan memberi keterangan lisan atau memanggil saksi-saksi, lebih suka memilih satu keputusan dibuat atas keterangan afidavit sahaja.

Diputuskan, menolak petisyen:

(1) Atas bukti bahawa pihak-pihak telah tinggal berasingan bagi satu tempoh terus-menerus sekurang-kurangnya dua tahun sebaik sahaja sebelum petisyen dikemukakan, pempetisyen telah prima facie membukti bahawa perkahwinan telah retak dengan tidak boleh diperbaiki semula, jika, tetapi hanya jika, responden tidak mempertikaikannya atau tidak mempunyai jawapan mengenai sebab responden telah membenar pempetisyen tinggal berasingan daripadanya. Tetapi, apabila responden mempertikaikan petisyen dan boleh memberi jawapan munasabah bahawa walaupun adanya dua tahun perpisahan, perkahwinan masih tidak retak dengan tidak boleh diperbaiki semula, mahkamah mestilah mempertimbangkan kesemua keadaan-keadaan termasuk kelakuan pihak-pihak dan kepentingan anak-anak perkahwinan, sebelum memutuskan sama ada perkahwinan sepatutnya dibubarkan.

(2) Pempetisyen telah dalam petisyen perceraian, bergantung kesemuanya atas perpisahan dua tahun sebagai alasan untuk perceraian, dan sebagai tambahan mengemukakan sijil yang perlu daripada Tribunal Perdamaian mengesahkan bahawa mereka tidak boleh menyelesai kesulitan perkahwinan itu. Akan tetapi, pempetisyen tidak menyatakan sifat kesulitan perkahwinan. Jawapan responden telah mengemukakan keterangan munasabah bagi menyokong pengataannya bahawa perkahwinan masih tidak retak dengan tidak boleh diperbaiki semula.

(3) Jika pengataan kelakuan yang buruk dibuat oleh pempetisyen itu benar, dia akan berhak mendapat perceraian. Akan tetapi, atas fakta-fakta dan daripada keenggannya memberi keterangan lisan, pengataannya tidaklah boleh diterima kerana mereka tidak selaras dengan jawapan responden. Pengataan responden nampaknya dibuat untuk menyembunyi fakta bahwa dia mahu perceraian supaya dapat meneruskan kecurangannya.

(4) Walaupun pempetisyen telah memperolehi injunksi interim menghalang responden daripada mengganggunya, adalah undang-undang biasa bahawa injunksi interim akan diberi selagi pemohon dapat menunjukkan isu yang perlu dibicarakan — ianya diberi untuk memelihara kedudukan sementara menunggu perbicaraan perkara itu. Jadi, perintah injunksi tidak akan membawa kesan res judicta.

(5) Walaupun responden tidak memberi keterangan lisan di bawah sumpah, keterangan bahawa perkahwinan berlangsung untuk 15 tahun adalah selaras dengan penegasan responden bahaawa dia tidak berbuat salah. Lagipun, beban untuk membukti responden telah berkelakuan dalam cara yang tidak munasabah terletak pada pempetisyen. Memandangkan bahawa pempetisyen suami telah mengadakan perhubungan di luar nikah dengan sekurang-kurangnya tiga perempuan yang lain, yang tidak dipertikaikan, adalah petunjuk yang jelas bahawa responden isteri bukanlah jahat dan tidak munasabah.]

[*Editorial Note*: The petitioner has appealed to the Supreme Court vide Civil Appeal No 02-550-1990.]

Cases referred to

1 *Rukat* v *Rukat* [1975] 1 All ER 343 (refd)
2 *Katz* v *Katz* [1972] 1 WLR 955 (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 53(1), (2), 54(1), (2)

YN Foo (*Miss*) for the petitioner.
John Fam for the respondent.

Cur Adv Vult

Lim Beng Choon J: At the outset I must confess that I find it rather difficult to arrive at a decision which would be fair to both the parties to this divorce petition and expecting neither heroic virtue or selfless abregation from either. This is so because both the husband petitioner and the wife respondent refused to subject themselves to viva voce examination at the trial of this case on 22 November 1989; neither did they call any witnesses to testify for them. I had indicated to them that it would be of assistance to this court if both parties were prepared to give oral evidence on oath. However, they refused and preferred to let me make a decision based on their respective affidavit evidence. Under the circumstances I can only do the best I can with the materials before me.

In this divorce petition filed on 11 December 1987 the husband petitioner averred that he married the wife respondent on 8 July 1969 at the Registry of Marriages, Georgetown, Penang under the Civil Marriage Ordi-

nance 1952. They had lived and cohabited in Petaling Jaya. There are three children of the family. The eldest daughter was born on 27 May 1970, the second son was born on 30 May 1972 and the third daughter was born on 22 September 1976. The matrimonial problems were referred to the Reconciliatory Tribunal, Petaling Jaya and the said tribunal had issued a certificate certifying that they had not been able to resolve the matrimonial problems to the satisfaction of the parties. The husband petitioner thereupon averred that the marriage had irretrievably broken down since the parties had lived apart for a continuous period of at least two years. Appropriate arrangements were made for the custody, care and control and maintenance of the children.

The wife respondent contested the petition and in her answer she denied that the marriage had broken down irretrievably because:

(a) the respondent had at all times been a good and responsible wife and mother to the petitioner and the children;
(b) the respondent had been happily married for the past 15 years until the petitioner suddenly left her without any cause or reason;
(c) the marriage was preceded by six years of courtship and only after careful consideration did the parties go into matrimony;
(d) the respondent had at all times stood by the petitioner in all his adversities and has at all times given the petitioner whatever support and love that is expected of a wife;
(e) the respondent had at no time done anything wrong to warrant the petitioner leaving the house and family.

The wife respondent also averred that the husband petitioner's desertion had taken a heavy toll on the children's education and happiness, and the respondent wholly attributed this to the petitioner's absence. The respondent believed that the marriage was never irretrievably broken down and from the petitioner's close contacts with his children, the petitioner would return to the family. Finally the wife respondent averred that she firmly believed that in the circumstances and particularly having considered the interest of all parties concerned especially the children, it would be wrong in principle to dissolve the marriage.

In response to the wife respondent's contentions, the husband petitioner put in his reply on 16 December 1988. In the reply he averred, inter alia, that:

(i) the parties had lived apart for a continuous period of nearly five years;
(ii) it was the respondent's aggressive, abusive and domineering behaviour which permeated the 15 years of marriage that had destroyed any love, trust and respect which the petitioner had in the respondent;
(iii) the respondent was a violent person with an uncontrollable temper, often attacking the petitioner physically;
(iv) the respondent constantly used foul and abusive language both on the petitioner and the children of the marriage;
(v) the respondent would insist on having her way in all aspects of the marriage and would resort even to emotional blackmail and threats to achieve her ends. For example, the respondent would knock her head against the cupboard so that she could frame the petitioner for physical violence and bang the doors of the house in the middle of the night to create a commotion and frighten the children;
(iv) the respondent demeaned all those who had to be in her presence and was besmirched by a general lack of self dignity, honour and decorum and by reason thereof the petitioner was often subjected to public ridicule;
(vii) the petitioner suffered considerable mental anguish and distress including palpitations and was on the verge of a severe mental breakdown.

The husband petitioner went on to aver that after leaving the matrimonial home on 15 March 1984, the respondent not only refused to acknowledge and accept that the marriage had broken down but began a trail of harassment and harmful activities to discredit the petitioner and undermine his position in the work place such as calling and imposing on the petitioner's superior and making a number of wild allegations on his character and person, with the intention of discrediting him and jeopardizing his position and status and disturbing close friends and relatives of the petitioner by disclosing distorted accounts of the petitioner's private life and activities so that he would be placed in a bad light. On account of the harassment and completely intolerable behaviour, the petitioner was compelled to apply and obtain an order of injunction from the court to restrain the respondent from assaulting, molesting and annoying or forcing her society upon or otherwise interfering with the petitioner, his friends, colleagues and superiors. The order of injunction was made on 11 July 1986. The respondent's application to set aside the injunction on 23 June 1987 was dismissed by the court. The husband petitioner went on to say that he could and would not live with the respondent again. Although he affirmed that he would continue to provide the necessary maintainance and would make financial provisions for the support, care and education of the children he firmly believed that the marriage had irretrievably broken down and that in all the circumstances of the case it would be in the interests of all parties especially the children to put an end to the marriage and reduce

the bitterness and trauma that had been ongoing since March 1984. Finally the husband petitioner admitted that he was and still is staying with another woman whom he intended to marry once the decree for divorce was granted.

The wife respondent by consent of all parties obtained leave of the court to file a rejoinder. In that rejoinder she denied all the wild mischievous and unsubstantiated accusations made by the petitioner in his reply and put him to strict proof. She went on to say that if indeed the accusations were true it would appear inconsistent with the fact that the marriage had lasted for 15 years. She also said that the husband petitioner had three extra-marital affairs with other women but she did not object as she viewed these extra-marital activities as only a passing fancy on the part of the petitioner. The respondent then went on to name the women, the years and the places in which the affairs occurred. She also said that the woman whom the petitioner was living with was and still is a married woman. Despite these extra-marital affairs the respondent said she was prepared to accept them as part of married life because she firmly believed that the petitioner would eventually return to the family.

The law applicable to this divorce petition is s 53(1) and (2) of the Law Reform (Marriage and Divorce) Act 1976 (hereinafter referred to as ('the Law Reform Act') which reads:

> (1) Either party to a marriage may petition for a divorce on the ground that the marriage has irretrievably broken down.
>
> (2) The court hearing such petition shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the break down of the marriage and, if satisfied that the circumstances make it just and reasonable to do so make a decree for its dissolution.

The proof of the breakdown of a marriage is provided in s 54(1) of the Law Reform Act. The provisions of that section relevant to the present case is paras (b) and (d) of that section which reads:

> 54(1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say —
> (a) ... (not applicable);
> (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
> (c) ... (not applicable);
> (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

Subsection (2) of s 54 of the Law Reform Act enjoins the court to consider the matters prescribed therein before deciding whether a marriage should be dissolved and it reads:

> In considering whether it would be just and reasonable to make a decree the court shall consider all the circumstances, including the conduct of the parties and how the interests of any child or children of the marriage or of either party may be affected if the marriage is dissolved and it may make a decree nisi subject to such terms and conditions as the court may think fit to attach, but if it should appear to the court that in all the circumstances it would be wrong to dissolve the marriage it shall dismiss the petition.

In enacting s 54 of the Law Reform Act, the legislature was in fact adopting the principles of s 1(1) and (2) of the English Matrimonial Causes Act 1973. I need only to reproduce the relevant provisions of the said s 1(1) and (2) which are in these terms:

> 1 (1) Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.
>
> (2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say —
>
> (a) ... (not relevant);
> (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
> (c) ... (not relevant);
> (d) ... (not relevant);
> (e) ... that the parties to the marriage had lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereinafter in this Act referred to as 'five years' separation).

Upon a careful scrutiny of s 54 of our Law Reform Act there are two striking features of the said section that need to be taken into consideration. Firstly, upon proof of the fact that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition, the petitioner has prima facie proved that the marriage has irretrievably broken down, if, but only if, the respondent is not contesting it or has no answer as to why the respondent would allow the petitioner to live separately from her or him as the case may be. Secondly, when the respondent is contesting the petition and is able to put up a reasonable answer that notwithstanding the two-year separation the marriage has not irretrievably broken down then the court must, pursuant to sub-s (2) of the said s 54, consider all the circumstances including the conduct of the parties and the interests of the children of the marriage before deciding whether the marriage should be dissolved.

The provisions of s 1(2)(e) of the English Matrimonial Causes Act 1973 read with s 5 of the said Act likewise provide that a respondent can oppose a grant of decree based on the five years' separation on the ground that the dissolution of the marriage will result in grave

financial or other hardship to the respondent and that it would in all circumstances be wrong to dissolve the marriage. Upon such opposition the English court would have to consider, inter alia, all the circumstances including the conduct of the parties and the interests of the children before it can decide whether the marriage should be dissolved.

In *Rukat* v *Rukat*[1] (which case was brought to my attention by counsel for the petitioner), Ormrod LJ said at p 352:

> It is quite plain from s 1 of the Act that from that time onwards the basis of dissolution of marriage is the irretrievable breakdown of the relationship between the spouses, and so clearly the whole policy of Parliament was, and is to create a state of affairs where, once the real relationship of husband and wife between the parties has gone, and gone for good, the legal relationship of husband and wife should as far as possible be removed or dissolved so as to bring the legal situation into line with the factual situation. But Parliament did not go quite so far because in s 2 it limits in a rather curious way the powers of the court by prescribing in effect what evidence the court must have before it could come to a conclusion that a marriage had irretrievably broken down, and consequently Parliament prescribed the well-known five 'facts' or situations. In this case we are concerned with the last of those, that is, five years' separation — the strongest possible evidence, one would have thought, that the factual relationship between husband and wife had permanently broken down. But Parliament decided to include s 4, to provide a defence in certain limited circumstances, mainly with an eye on wives who might suffer great hardship at the hand of unfaithful husbands who were able to take advantage of the five-year separation to get a divorce which the wives could otherwise have withheld.

Reverting to the present petition it is to be noted that the husband petitioner had in the divorce petition relied completely on the two-year separation as a ground for getting an order of dissolution of the marriage. True he had also said in the petition that the Reconciliatory Tribunal, Petaling Jaya had certified that they were unable to resolve the matrimonial difficulty but he had not said what the nature of the matrimonial difficulty was. More importantly his reference to the said Reconciliatory Tribunal was necessary simply because s 106 of the Law Reform Act required him to do so before he could petition for a divorce. Against this stand taken by the husband petitioner the wife respondent, in her answer (which I have reproduced earlier and I need not repeat it), had put up a reasonable explanation to support her contention that the marriage has not irretrievably broken down. Thereupon in his reply, the husband petitioner added a twist to his petition by relying on fact (b) of s 54(1) of the Law Reform Act, namely, that the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with her and he gave a long list of allegations of misconduct on the part of the respondent which I have earlier stated and I need not repeat those allegations again. These allegations were categorically denied by the wife respondent.

Now what is the standard of behavior to adopt in construing s 54(1)(b) of the Law Reform Act? A useful test is stated by Sir George Baker P in *Katz* v *Katz*[2] at p 960:

> The standard is that he must behave in such a way that the petitioner cannot reasonably be expected to live with [him].' That is the test. It is for the judge, not the petitioner alone, to decide whether the behaviour is sufficiently grave to fulfil that test, that is, to make it unreasonable to expect the petitioner to endure it, to live with the respondent. Also it is for the judge to say whether the marriage has irretrievably broken down. To that extent I agree with what Bagnall J said in *Ash* v *Ash* [1972] Fam 135. The court must consider the effect of the behaviour on the particular petitioner and ask the question is it established, not that she is tired of the respondent, or, colloquially, fed up with him, but that she cannot reasonably be expected to live with him. In a sense it seems to me wrong to call it, as we are apt to do, unreasonable behaviour. It is behaviour that causes the court to come to the conclusion that it is of such gravity that the wife cannot reasonably be expected to live with him.

Following the test laid down in *Katz* v *Katz*[2] I would certainly agree that if the allegations of misconduct made by the husband petitioner against the wife respondent were true he would be entitled to an order of dissolution of the marriage. But are they true? Bearing in mind that the marriage was preceded by a six-year courtship and it had lasted some 15 years, it is highly incredible that the wife respondent would suddenly turn vicious and behaved with a gorgon-like mostrosity. Furthermore if the allegations made by him were true he should have no hesitation in going to the witness box and testifying to the truth of what he had alleged. He could easily have called his superior or any of his friends to whom he said the wife respondent had made derogatory remarks about him to testify on his behalf. In failing to do so I cannot accept his allegations particularly when they could not be reconciled with what the wife respondent had said in her answer. To my mind the allegations were made to hide the fact that he wanted a divorce in order to continue with his infidelity. In arriving at this conclusion I have not overlooked the fact that the husband petitioner had obtained an injunction refraining the wife respondent from harassing him, his superior and/or his friends and associates. But it is trite law that an interim injunction would be granted so long as the applicant could make out a triable issue — it is granted to maintain the status quo pending the trial of the substantive matter. An injunctive order cannot have the effect of res judicata.

Turning to the affidavit evidence of the wife petitioner, I have borne in mind that she too did not choose to give oral evidence under oath. Be that as it may, the burden of proving that the respondent has behaved in

an unreasonable manner as provided in s 54(1)(b) is on the petitioner and not the respondent since it is the former that made the allegations. Furthermore as the marriage has lasted for 15 years it is consistent with the assertion of the wife respondent that she has done nothing wrong. Bearing in mind that the husband petitioner had had extra-marital affairs with at least three other women (which has not been challenged) and the wife respondent had tolerated such activities, this is a clear indication that the wife respondent is not a vicious person. She accepted the fact that the husband's infidelity was a passing fancy.

In the final analysis I am satisfied that the marriage has not irretrievably broken down. The husband's infidelity is but a passing fancy considering that he had affairs with three different women at different times. It is quite probable that after some time he would reconcile with his wife after the flush of the extra-marital affairs had ceased. It must be remembered that in recommending the enactment of the English Divorce Reform Act 1969 (now replaced by the Matrimonial Causes Act 1973) the Law Commission Report (Cmnd 3132) said at p 15:

> (i) To butress rather than to undermine the stability of marriage and (ii) when regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with maximum fairness and the minimum bitterness, distress and humiliation.

Thus the Law Reform Act is not enacted for the purpose of encouraging divorce but to buttress the stability of marriage where it is possible to do so.

For the above reasons, the husband's petition is dismissed with costs.

Petition dismissed.

Solicitors: *Shearn Delamore & Co and Drew & Napier; Lee Fam Wong*

Reported by *Azra Moiz*

Kesatuan Pekerja-Pekerja Kelab Selangor lwn Ketua Pengarah Kesatuan Sekerja & Satu Yang Lain

MAHKAMAH TINGGI (KUALA LUMPUR) — USUL PEMULA NO R8-25-98-89
EUSOFF CHIN H
3 SEPTEMBER 1990

Persatuan Yang Tidak Diperbadankan — Kesatuan sekerja — Pertikaian mengenai isu keahlian kesatuan dan pemilihan ahli jawatankuasa kesatuan — Mesti diselesaikan mengikut acara dalam kaedah dan perlembagaan kesatuan berkenaan — Rujuk kepada panel timbangtara — Ketua Pengarah tidak mempunyai apa-apa bidang kuasa untuk mengambil tindakan kecuali kedua-dua pihak telah bersetuju merujuk kepadanya — Akta Kesatuan Sekerja 1959, ss 44, 45 & 46

Undang-Undang Pentadbiran — Kuasa Ketua Pengarah Kesatuan Sekerja membatal atau menarikbalik pendaftaran sesuatu kesatuan sekerja — Keputusan Ketua Pengarah membatalkan pendaftaran kesatuan dilakukan secara tergesa-gesa dan di luar bidang kuasa — Perintah certiorari dikeluarkan — Akta Kesatuan Sekerja 1959, ss 15 & 71

Pada 12 Julai 1989, Ketua Pengarah Kesatuan Sekerja Malaysia ('Ketua Pengarah') membatalkan pendaftaran Kesatuan Pekerja-Pekerja Kelab Selangor ('Kesatuan itu') (pemohon) atas alasan bahawa Kesatuan telah melanggar sebarang peruntukan Akta Kesatuan Sekerja 1959 (Akta 262) atau peraturan di bawah Akta tersebut atau peraturan Kesatuan. Kesatuan merayu kepada menteri tetapi telah ditolak. Latar belakang kes adalah berikut.

Pada 8 Disember 1988, tiga orang plaintif memohon melalui Saman Pemula No R8-31-134-88 di Mahkamah Tinggi untuk injunksi terhadap Kesatuan dan 11 orang ahli jawatankuasanya atas balasan bahawa ahli-ahli tersebut telah tidak dilantik dengan sempurna mengikut kaedah-kaedah Kesatuan. Alasan yang diketarakan ialah banyak ahli yang mengundi dalam pemilihan ahli Jawatankuasa Kesatuan tidak lagi menjadi ahli. Mahkamah membuat perintah antara lainnya, bahawa perkara yang dipertikaikan patutlah diselesaikan terlebih dahulu dengan menggunakan remedi lain mengikut k 26. Kaedah-Kaedah dan Perlembagaan Kesatuan berkenaan, yakni dikemukakan ke panel timbangtara oleh kerana pihak Kesatuan telah tiba-tiba menerima Borang F Akta 262 daripada Ketua Pengarah di bawah s 15 Akta itu bercadang membatalkan pendaftaran Kesatuan itu. Alasan ialah bahawa Kesatuan telah melantik presiden dan penolong setiausaha dari kalangan ahli yang tidak berfaedah dan resit bayaran yuran yang dikutip ditandatangani oleh pegawai lain selain dari Bendahari Kesatuan. Pada 11 April 1989, Kesatuan menulis kepada Ketua Pengarah meminta keterangan lanjut tentang tuduhan tersebut tetapi surat itu tidak dijawab. Afidavit Timbalan Ketua Pengarah menunjukkan bahawa sebab-sebab pembatalan pendaftaran Kesatuan itu ialah kerana kesatuan tidak menyelesaikan isu keahliannya itu. Nampaknya Ketua Pengarah tidak menjalankan siasatan langsung atas aduan mengenai keahlian Kesatuan tetapi telah terus mengeluarkan Notis dalam Borang F pada 30 Mac 1989. Penyiasatan hanya dijalankan oleh Pengarah Jabatan Kesatuan Sekerja Negeri Selangor pada 28 April 1989, sebulan selepas Borang F dikeluarkan. Beliau mengesyorkan untuk 'perintah dikeluarkan terhadap Kesatuan supaya pemilihan semula pegawai-pegawai diadakan bagi menyelesaikan pertikaian dalam Kesatuan.